IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2587 OF 2007

Dr. Deepak Panditrao & Ors. ..Petitioners.

V/s.

The State of Maharashtra & Ors. ..Respondents.

Mr.Madhav Jamdar for petitioners.

Mr.G.W.Mattos, AGP for respondent Nos. 1 to 3.

Mr.G.V.Nagar Seth for respondent No.6.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 19, 2007.

P.C. :

1. On the earlier occasion, the Government Pleader waived notice on behalf of Respondent No.1 to 5 and 7. However, today, it is pointed out that he had no instructions to accept notice on behalf of Respondent No.7. He submits that the Petition contains allegations against Respondent No.7, for which reason the said Respondent No.7 will have to contest the same himself.

2. Heard Counsel for the parties. The first question is: whether there is any infirmity in the order passed by the Deputy Registrar, Co-operative Societies 'L' Ward, Mumbai dated 6th July, 2007, in

exercise of powers under section 77(A) of the Maharashtra Cooperative Societies Act, 1960. In so far as that order is concerned, I have no hesitation in taking the view that it is rightly passed; and is the only appropriate order to be passed in the fact situation of the present case. This is so because, out of the seven elected executive members only three had executed the requisite bond, as was required in terms of Section 73(1AB) of the Act. In so far as the elected executive members, who failed to execute the bond, in view of the mandatory provisions of Section 73(1AB), they incurred automatic disqualification by operation of law. As a result, four vacancies were automatically caused in the Managing Committee consisting of seven members. It appears that the Petitioner No.2 came to be coopted by Petitioner Nos. 1,3 and 4 who were the other elected members of the executive committee. However, what is overlooked is that the quorum of the managing committee, as prescribed by the Bye Law is four members. In that sense, the Managing Committee could not have functioned for want of quotum. For that reason the co-option of Petitioner No.2 was void ab initio. The only course in such a situation was to invoke powers under section 77A of the Act to appoint administrator in respect of such Society.

3. Besides, there is substance in the stand taken on behalf of the Respondents that the bond, which is required to be executed within the specified time has to be in conformity not only with the requirements of Section 73(1AB), but also rule 58A and in particular the mandate of section 34 of the Bombay Stamp Act. It is not in dispute that the Stamp Papers on which the bonds have been executed by the Petitioner Nos. 1, 3 and 4 purportedly within time, were not issued in the name of the said Petitioners or the Society-which is the requirement of Section 34 of the Bombay Stamp Act. Besides, the bonds executed by the said Petitioners is on the stamp papers which are admittedly of period prior to six months of its execution, which again cannot be treated as a valid document in view of Section 52-B of the Bombay Stamp Act. Taking any view of the matter, therefore, the order passed by the first Authority in exercise of powers under section 77A of the Act is unexceptionable.

4. Counsel for the Petitioners placed reliance on the decision of our High Court in the case of **A.Sangameshwaram & Anr. V/s.Deputy Registrar of Co-operative Societies, Mumbai reported in 2006(1)**

Mh.L.J.280 with particular emphasis on exposition in paragraph 7 of the said decision which reads thus:

> "It is clear from a reading of the section that a member who fails to execute a bond within 15 days is deemed to have vacated office as a member of the Committee. The disqualification, therefore, occurs upon failure to execute such bond and not for failure to forward the bond under Rule 58A by the Chief Executive Officer/Secretary of the society to the Registrar. Therefore, a decision on this point is vital."
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> (emphasis supplied)

The observations in this decision are of no avail to the Petitioners having regard to the fact that no valid bond has been executed by the elected members, muchless within time. It would have been a different matter if there was failure on the part of the society or the concerned committee member to forward the said duly executed bond to the competent authority. That would stand on a different footing than the non-execution of "a valid bond" within specified time.

5. Counsel for the Petitioners would however, contend that the order passed by Respondent No.7 is a tainted order. As, on the relevant date on which it is purportedly prepared and passed i.e. on 23rd October, 2007, the said officer was known to be

absconding in the record of the police. Even if this argument was to be accepted as it is, that does not take the matter any further for the Petitioner. For, I have affirmed the view taken by the first Authority which, in my opinion, is the correct approach in the fact situation of the present case. Even if the Petitioners were to succeed on the later argument, at best, the appeal preferred by the Petitioners will have to be restored before the appellate authority. However, for the reasons already recorded, it is unnecessary to burden this proceeding with the enquiry as to whether the Respondent No.7 had actually attended his office and was discharging his official functions on 23rd October, 2007 or that the document is fabricated or got up, as is contended by the Petitioners.

6. In my opinion, Petition ought to fail for the aforesaid reasons.

7. However, it is made clear that the first Authority would ensure that the process of election to induct newly elected Managing Committee is held with utmost dispatch and in no case later than one month from today. In other words, the election process to elect new Managing Committee members for

the remainder term of the Managing Committee be initiated within one month, to be completed as soon as possible and not later than 3 months from today. The Respondent No.2 is present in the Court and assures to comply with this directions.

8. Counsel for the Respondent-Authority also assures that further order will be issued to indicate that the Petitioner Nos. 1,3 and 4 will function as members of the Board of Administrator till the newly elected Managing Committee is inducted and takes charge of the affairs of the Petitioner No.5 society. That assurance is accepted.

9. Needless to observe that the members of the Board of Administrator shall only discharge day to day activities and will not take any policy decision in relation to the Petitioner No.5 society.

10. As the Respondent authority is willing to appoint the Petitioner Nos. 1,3 and 4 as members of Board of Administrator, to that extent the order passed by the first authority would stand modified in terms of this order. Respondent No.3 shall however, take steps to issue formal order to complete the record, which be done on or before 27th December,

2007.

11. Petition disposed of on the above terms.

(A.M.KHANWILKAR,J)